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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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COMMISSION INQUIRY INTO  
POSSIBLE MODIFICATION OF THE  
COMMISSION'S HOLDING  
COMPANIES AND AFFILIATED  
INTEREST RULES, A.A.C. ARTICLE 8,  
R14-2-801 ET SEQ.

DOCKET NO. AU-00000A-15-0246

COMMENTS OF QWEST CORPORATION  
D/B/A CENTURYLINK QC, CENTURYLINK  
COMMUNICATIONS, L.L.C., AND  
CENTURYLINK PUBLIC  
COMMUNICATIONS, INC. CONCERNING  
NOTICE OF PROPOSED RULEMAKING

Pursuant to the Arizona Corporation Commission ("Commission") Order of February 11, 2016, Decision No. 75448, a Notice of Proposed Rulemaking has been filed and published according to law. These Comments in support of the Proposed Rulemaking are submitted by Qwest Corporation d/b/a CenturyLink QC, CenturyLink Communications, L.L.C., and CenturyLink Public Communications, Inc. (collectively, "CenturyLink"), in accordance with the provisions of the Order requesting written comments from interested parties.

For the reasons stated below, CenturyLink fully endorses the proposal to amend the Public Utility Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 *et seq.* (the "Rules") as published in the *Arizona Administrative Register*, Volume 22, Issue 10 on March 4, 2016, to exempt from the operation of the Rules telecommunications utilities whose retail services are classified as

1 competitive by the Commission. The competitive markets for telecommunications services present  
2 unique circumstances that compel expeditious action. The Rules no longer serve a useful purpose in the  
3 competitive environment of telecommunications in Arizona and should be eliminated for competitive  
4 carriers.

5 The Rules were promulgated by the Commission in its *Decision No. 56844* (March 14, 1990), six  
6 years before Congress enacted the landmark Telecommunications Act of 1996, which opened local  
7 telecom to competition. The Rules are extensive and arguably the most burdensome regulations of that  
8 type in any of the states in which CenturyLink operates. In adopting the Affiliated Interests Rules, the  
9 Commission stated that the “singular purpose is to ensure that the ratepayers do not pay rates for utility  
10 service that include costs associated with the holding company structure, financially beleaguered  
11 affiliates, or sweetheart deals with affiliates intended to extract capital from the utility to subsidize non-  
12 utility operations.” *Decision No. 56844*, Concise Explanatory Statement at 2. The Arizona Supreme  
13 Court found that the Rules were within the Commission’s discretionary ratemaking authority, to prevent  
14 public utility corporations from engaging in losing affiliate financial transactions that must be made  
15 good by the captive ratepayers.<sup>1</sup> Since the implementation of the Telecommunications Act of 1996,  
16 however, as noted in the joint Application filed by CenturyLink QC, AT&T, and Cox on August 19,  
17 2015, the telecommunications industry in Arizona (and nationwide) has grown substantially and become  
18 more fully competitive. In the current market, telecommunications customers have a variety of service  
19 options, including the option to obtain service from entities not regulated by the Commission. Retail  
20 customers are no longer in the thrall of monopoly telecom providers.

21 In 2011, CenturyLink QC, the incumbent local exchange carrier (ILEC) providing local  
22 telecommunications services to customers in much of Arizona including the Phoenix and Tucson  
23 metropolitan areas, applied to the Commission for classification of its retail local exchange services as

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24 <sup>1</sup> *Ariz. Corp. Comm’n v. Ariz. Ex rel. Woods*, 171 Ariz. 286, 830 P.2d 807 (1992).  
25

1 competitive under Commission rules (R14-2-1108). Ariz. Corp. Comm'n. Dkt. No. T-01051B-11-0378.  
2 That proceeding has fully concluded, with the result that CenturyLink QC's retail services are  
3 designated competitive. Decision No. 73354, August 21, 2012.

4 A competitive designation means that "customers of the service have reasonably available  
5 alternatives." See, definition of "Competitive Telecommunications Service," *R14-2-1102(4)*. Indeed,  
6 that is the case, as demonstrated by the precipitous declines in wireline subscribership across all wireline  
7 carriers, and the steep increase in wireless. The telecommunications market has changed dramatically  
8 since the Commission entered its Affiliated Transactions Rules in 1992, when captive ratepayers had to  
9 make good the losses of imprudent holding company actions. Now, when faced with unsatisfactory  
10 service or higher rates, retail telecom customers in Arizona simply move to another provider, choosing  
11 from the many that are available. Competitive telecom companies cannot make up for any bad business  
12 diversification decisions by passing the losses through to utility customers in the form of rate increases.  
13 Companies that cannot pass costs through to monopoly ratepayers have no incentive to engage in cross-  
14 subsidization or other activities that financially weaken the utility operation.

15 In 2013, the Arizona Legislature recognized that open markets satisfactorily address the same  
16 concerns that prompted the Commission to issue the Rules, and amended the Arizona Corporation  
17 Commission statute. The Legislature amended A.R.S. §40-285 to exempt competitive telecom providers  
18 from the requirement to secure Commission approval of the disposition of assets by public service  
19 corporations and the acquisition of the stock of public service corporations. The amendment added the  
20 following to the statute:

21 40-285. F. This section does not apply to a telecommunications corporation whose retail  
22 telecommunications services are all classified as competitive by the Commission, except  
23 as may otherwise be determined by a Commission order after the effective date of this  
24 amendment to this section.  
25


1 The proposed amendment language in the Notice of Proposed Rulemaking follows the legislative  
2 example. The same logic that supporting the removal of competitive retail telecom providers from the  
3 application of A.R.S §40-285 applies equally to the Commission's Affiliate Interest Rules.

4 The current Rules allow for waivers, and the Commission routinely has granted numerous  
5 limited waivers to telecom providers. The widespread granting of waivers shows that (i) the scope of  
6 the Rules are over-broad, (ii) separate company waiver applications have resulted in disparate levels of  
7 relief, and in no case has the Commission granted complete exemption from the full effect of the Rules,  
8 and (iii) the industry and the Commission and Staff are spending inordinate amounts of time and energy  
9 on waivers for matters which are better addressed by a total exemption from the rule for competitive  
10 providers.<sup>2</sup>

11 Retail telecom in Arizona is competitive; the Legislature has acted in recognition of the effect of  
12 such competition by its amendments to A.R.S §40-285; and, the language in the Notice of Proposed  
13 Rulemaking to exclude competitive telecommunications carriers from the Rules is narrowly tailored  
14 and simple. Therefore, CenturyLink asks the Commission to move expeditiously to amend the Rules by  
15 adopting the amendments in the Notice of Proposed Rulemaking.

16 RESPECTFULLY SUBMITTED, this 4<sup>th</sup> day of April, 2016.

17 **QWEST CORPORATION D/B/A**  
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24 <sup>2</sup> CenturyLink holds a limited waiver granted in Decision No. 74092. Notwithstanding that waiver,  
25 CenturyLink joins in requesting that the Rules be amended to completely exclude competitive  
telecommunications carriers.

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